Axelson, Inc. *and* Employees of Axelson, Inc., by Doyle Stevens, Ed Guthrie and Ed Roberson. Case 16-CA-8956

August 4, 1981

DECISION AND ORDER

On February 25, 1981, Administrative Law Judge David P. McDonald issued the attached Decision in this proceeding. Thereafter, the Charging Party and Respondent filed exceptions and supporting briefs, and the Charging Party, Respondent, and the General Counsel filed a joint motion to modify the Administrative Law Judge's recommended Order and notice.[1]

The Board has considered the record and the attached Decision in light of the exceptions, briefs, and joint motion and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Axelson, Inc., Longview, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified.

1. Substitute the following for paragraph 1(a):

"(a) Promulgating, maintaining, or enforcing any rule or policy, written or unwritten, prohibiting its employees from posting either pro- or anti-union literature by employees on bulletin boards that are available for general use by employees, or prohibiting the distribution of such literature in nonworking areas during employees' nonworking time."

2. Substitute the following for paragraph 1(b):

"(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the Act."

3. Substitute the following for paragraph 2(a):

"(a) Rescind any rule or policy which unlawfully restricts the employees' use of the Respondent's bulletin boards that are available for general use by employees and which unlawfully restricts the distribution of either pro- or anti-union literature by employees, during employees' nonworking time in nonworking areas of its operation."

4. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT promulgate, maintain, or enforce any rule or policy which prohibits our employees from posting either pro- or anti-union literature by employees on company bulletin boards that are available for general use by employees, or prohibit our employees from distributing either pro- or anti-union literature in nonworking areas during employees' nonworking time.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them under Section 7 of the Act.

WE WILL rescind any rule or policy which unlawfully restricts our employees' use of company bulletin boards that are available for general use by employees and which unlawfully restricts the distribution of either pro- or anti-union literature by employees during employees' nonworking time in nonworking areas.

AXELSON, INC.

[1] Respondent requests that its exceptions to the Administrative Law Judge's Decision be considered only if the Board denies the parties' joint motion to modify the Administrative Law Judge's recommended Order and notice.

[2] In the joint motion, the parties contend that certain sections of the Administrative Law Judge's recommended Order are overly broad and inconsistent with the findings of fact and conclusions of law, nor are they necessary to remedy the violations. First, the parties argue that pars. 1(a) and 2(a) of the Administrative Law Judge's recommended Order and par. 2 of the proposed notice should be modified to include language indicating that the employees are to have access to Respondent's bulletin boards "that are available for general use by employees." Second, the parties contend that the Administrative Law Judge's reference to "any other labor organization" in par. 1(a) of the recommended Order and par. 2 of the proposed notice should be deleted as being overly broad. We find merit in the parties' contentions and, accordingly, we grant the joint motion and shall modify the Administrative Law Judge's recommended Order and notice.

In light of our rulings on the joint motion, as requested by Respondent, we have not considered Respondent's exceptions and brief in reviewing the Administrative Law Judge's Decision.

In view of the nature and extent of Respondent's violations and in order to more fully effectuate the policies of the Act, we have, *sua sponte*, determined that the Administrative Law Judge's recommended broad cease-and-desist order is unwarranted in this case. Accordingly, we will modify the Administrative Law Judge's recommended Order and notice to include the narrow injunctive language. See, generally, *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

DECISION

STATEMENT OF THE CASE

DAVID P. MCDONALD, Administrative Law Judge: This case was heard before me at Marshall, Texas, on August 28, 1980,[1] pursuant to a complaint issued by the Regional Director for the National Labor Relations Board for Region 16, on March 21, 1980, which is based on a charge filed by Doyle Stevens, Ed Guthrie, and Ed Roberson, employees of Axelson, Inc., on February 14, 1980. The complaint alleges that Axelson, Inc., hereinafter called the Respondent or Company, has engaged in certain violations of Section 8(a)(1) of the National Labor Relations Act, as amended.[2]

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Since the close of the hearing, briefs have been received from the General Counsel, counsel for the Respondent, and counsel for the Charging Parties.

Upon the entire record, my observation of the witnesses, and the consideration of the submitted briefs, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Respondent admits that it is a Delaware corporation engaged in the manufacturing and marketing of production equipment for refining in the petrochemical industry. Its office and principal place of business is located in Longview, Texas. It further admits that during the past year, in the course and conduct of its business, it has received, sold, and shipped goods and materials valued in excess of $50,000 from suppliers and to customers outside the State of Texas. Accordingly, it admits, and I find, that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted and I find that the International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Issues*

The principal issues raised by the pleadings are whether the Respondent violated Section 8(a)(1) of the Act by maintaining overly broad no-solicitation and no-distribution rules and an unlawful bulletin board policy.

B. *The Facts*

During the summer of 1979, several employees of the Respondent filed a decertification petition, Case 16-RD-841, seeking to decertify the International Association of Machinists and Aerospace Workers, Local Union No. 1923. Prior to the scheduled election of September 13, several pro-decertification employees, Doyle Stevens, Ed Guthrie, and Ed Roberson, sought permission from John Teegerstrom, the Respondent's manager of industrial relations and personnel, to post pro-decertification material on bulletin boards located throughout the plant.

Teegerstrom denied the request several times. He testified that he told them:

> No, they could not post items on the company bulletin boards or company property; they could not distribute the stuff in the plant. As far as I was concerned, no one else was allowed to do it and they were not going to be either.

His personal philosophy and interpretation of the Company's rules concerning bulletin boards were further revealed in the following testimony:[3]

> Well, primarily they are for sale notices. There may have been an occasion where you had a situation maybe, let's see, I can't recall. The Boy Scouts, something of that nature. But all of those bulletins, the reason I approve those is so that I know what is going up there, I am not going to have every Tom, Dick and Harry putting stuff on the bulletin board.
>
> The reason you have to have that, you cannot have every Tom, Dick and Harry politician and everybody else, the local churches and the bazaar and everything else wanting to come in and hand out literature, sell tickets to the Shrine Circus, we don't even allow the United Way in. We don't allow any-

[1] All dates herein refer to 1979 unless otherwise indicated.

[2] After the hearing was commenced, the General Counsel moved to amend the complaint to read:

> 7.
>
> Since on or about March 25, 1976, through February 18, 1979, Respondent and Union identified in paragraph 5 maintained, the following rule in the Collective Bargaining Agreement:
>
> There will be no solicitation of employees for Union membership or dues conducted on the premises of the Company during working hours by the Union, or its representatives or by employees. Any employee who violates this Section will be subject to disciplinary action by the Company.
>
> (a) Since on or about 1979 and continuing to date, Respondent has maintained the following rule applicable to all employees: Employees are not permitted to make solicitations of any kind on Axelson premises.
>
> (b) Since on or about June 1979 and continuing to date, Respondent has maintained an overly broad no-distribution rule applicable to all employees at its Longview facility.
>
> 11.
>
> The acts of Respondent alleged in paragraphs 7, 7(a), 7(b), 8 and 10 above constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

The Respondent's attorney did not object to amending pars. 7, 7a, and 11. On behalf of his client, he admitted to the allegations of pars. 7, 7a, and denied pars. 7b and 11. The Respondent's objection to amend the complaint to include par. 7b was overruled.

[3] The Axelson's policies and regulations for hourly employees concerning bulletin boards provided, "Official company bulletin boards are located around the plant. General notices of interest to all employees are posted from time to time. Do not Remove, Deface, or Change notices or bulletins posted in the plant by the Company. All bulletins must be approved by the Manager of Industrial Relations."

> body to do that and I continue to enforce that and I will continue to enforce that.

Teegerstrom explained that the Respondent had a longstanding policy which required an individual to obtain management's permission to use the bulletin boards, which was rarely granted. The major exception to the general denial was notices dealing with sale of employees' personal property such as cars, TVs, and motorcycles. He did grant them permission to utilize the two cafeterias to distribute their campaign literature. However, they were denied the right to distribute or post their literature anywhere else in the plant, including restrooms, lockers, and break and eating areas.

Initially, the group posted information on the walls of the cafeteria. When Teegerstrom discovered the posted material, he removed it from the cafeteria walls and informed the men they could only distribute the material by placing it on the cafeteria tables. The men complied with these instructions, although they felt it was an ineffective method of reaching their fellow workers. Since they were unable to remain in the cafeteria, they could not prevent the continued disappearance of their literature.

Edward Roberson testified that, if it had not been for Teegerstrom's rule, they would have distributed their literature in all the nonwork areas, such as locker rooms, restrooms, break areas, and picnic areas. They were not well organized, therefore, it was impossible to pursue the campaign off the Respondent's property.

There were approximately six company bulletin boards on the Respondent's property. In addition, there were bulletin boards that were for the exclusive use of the Union.

On January 10, Ronald G. Dolman's request to post information concerning their credit union was denied. In February, Doyle Stevens' renewed request to post credit union literature was again denied. He could not recall if he gave them the alternative option of placing credit union literature on the cafeteria tables.

Teegerstrom had instructed his supervisors to prohibit any employee from posting or handing out literature on company property. He personally ripped a pro-decertification poster down from a window. His rationale was based on a fear that such posting would precipitate labor violence:

> Well, ever since I have been there and prior to my coming, there has been a lot of violence in the plant. As I recall, the first week I was there at work, I had to examine two automobiles that had in excess of 20 bullet holes in them and posting that and with the problems that had gone on, I was not going to run the risk of having problems in that plant precipitating arguments and everything else.

At the conclusion of the testimony, the parties agreed to the following stipulation:

> . . . that no member of management of Axelson, Inc. prevented Bud Dolman, Doyle Stevens, Bob Sides, from oral solicitation in support of the decertification petition.

The Axelson's rule on solicitation was stated in the salaried employee handbook:

> Employees are not permitted to make solicitation of any kind on Axelson premises.

The expired collective-bargaining agreement between the Respondent and the Union also provided:

> 6.9 There will be no solicitation of employees for Union membership or dues conducted on the premises of the Company during working hours by the Union, or its representatives or by employees. Any employee who violates this Section will be subject to disciplinary action by the Company.

C. *Analysis and Conclusions*

The Respondent correctly argues that a portion of the complaint, concerning the no-solicitation rule, was based solely on provisions of a collective-bargaining agreement between the Union and the Respondent which expired on February 18, 1979. There was no evidence introduced that would indicate this provision of the agreement was extended beyond February 1979. The agreement had expired over 1 year prior to the date the current charge was filed and over 11 months before the complaint was issued. Therefore, the 6-month limitation period prescribed by Section 10(b) of the Act bars consideration of the no-solicitation rule found in the expired collective-bargaining agreement as a possible violation of Section 8(a)(1) of the Act. However, there are several other no-solicitation provisions scattered throughout various rules and regulations of the Respondent.

The employee handbook, which is distributed only to the salaried employees, contains the following no-solicitation clause:

> Employees are not permitted to make solicitation of any kind on Axelson premises.

This clause is overly broad on its face. However, the record is void of any evidence which would prove that this particular no-solicitation clause was ever disseminated to the hourly employees, let alone enforced. In fact, the parties to this case agreed at the hearing to the following stipulation:

> . . . that no member of management of Axelson, Inc. prevented Bud Dolman, Doyle Stevens, Bob Sides, from oral solicitation in support of the decertification petition.

Since there is no evidence to indicate the hourly employees were informed or even aware of the employee handbook no-solicitation rule, the Respondent cannot be found in violation of the Act.

Upon his arrival on July 7, 1979, Teegerstrom proceeded to revise Axelson's "General Rules, Policies and Benefits." He did not change paragraph A of the section

on general rules and progressive discipline which reads as follows:[4]

> A. Gambling in any form; selling tickets or any article; taking orders; soliciting subscriptions; taking up collections; or engaging in any outside activity on the Company premises without express permission.

No-solicitation rules are not *per se* a violation of the Act where they are directed to the solicitation of articles of goods and not to union solicitation.[5] Paragraph A refers only to soliciting subscriptions and does not contain a prohibition of union solicitation. Upon the review of all the evidence, I find a lack of sufficient convincing evidence to prove that the Respondent has violated Section 8(a)(1) of the Act by maintaining an overly broad no-solicitation rule.

Axelson's general rules, policies, and benefits also provided the following section titled "Bulletin Boards":

> Official company bulletin boards are located around the plant. General notices of interest to all employees are posted from time to time. Do Not Remove, Deface, or Change notices or bulletins posted in the plant by the Company. All bulletins must be approved by the Manager of Industrial Relations.

The evidence is not totally clear as to the exact number of bulletin boards maintained by the Company. There were estimates of four to six bulletin boards which were used by the Company and additional boards which were labeled "Union" and were for the exclusive use of the union involved in the RD petition.

Teegerstrom's method of enforcement of the no-posting and no-distribution policy is not in dispute. He simply denied all request to post or distribute, including information dealing with credit unions. The only exceptions were personal sale notices of employees' property.

It is true, as the Respondent's brief points out, that the employees do not have a vested right to post. The use of an employer's bulletin board is not generally a protected activity under the Act.[6] However, the Board has held that, where the employer has made its bulletin boards available to employees for posting of notices relating to social and religious affairs, etc., it could not validly discriminate against notices of union meetings which employees also posted.[7] Here, the uncontradicted evidence indicates that employees had the free use of the Company's bulletin boards to advertise the sale of personal property and the Union was provided exclusive use of at least two bulletin boards. Under such circumstances, the denial of the right to post pro-decertification material on the company bulletin boards was a denial of employees' Section 7 rights and is a violation of Section 8(a)(1) of the Act.

The men seeking decertification were allowed only to deposit their literature on the tables of the cafeteria. *They were not even allowed to hand out the material.* Although there were other nonwork areas inside and outside the plant, the workers were prohibited from using these areas for the distribution of their literature, even during nonworking periods such as lunch and breaktime. Since not everyone used the cafeteria, their efforts to distribute literature to all employees were doomed from the inception.

Teegerstrom's explanation for his excessively restrictive policy is very questionable. It is true that a great deal of violence occurred during the decertification campaign. Several cars were riveted with bullets. However, his use of tension and violence to justify his restrictive policy was wholly pretextual. There was no evidence to indicate that the literature in question was inflammatory, nor was there evidence to substantiate a finding that potential violence would increase if the literature were posted or distributed in the various nonwork areas in addition to the cafeteria. If there existed a potential danger in distributing the literature in the various break areas, the danger would not be any less by leaving it in the cafeteria. It is interesting to note that, long after the election, Teegerstrom refused to allow the posting or distribution of material on behalf of the credit union. Obviously, information concerning the credit union is not a subject which would precipitate violence. In reviewing Teegerstrom's testimony and policy, I must conclude he did not exercise any judgment in what could be posted or distributed. He simply denied all requests. Such restrictions were overly broad and in violation of Section 8(a)(1) of the Act.

Over the objection of the Respondent, the General Counsel was permitted to amend the complaint by adding the following paragraph:

> 7(b) Since on or about June 1979 and continuing to date, Respondent has maintained an overly broad no-distribution rule applicable to all employees at its Longview facility.

The Respondent has argued that, by allowing this amendment during the hearing, it has been denied fundamental due process since it was "deprived of the opportunity to prepare a defense to its irreparable prejudice." I disagree.

The original complaint contained an allegation that the Respondent maintained an unlawful no-solicitation rule. The amendment is so closely related to the no-solicitation rule that preparation of a defense for either rule would undoubtedly include preparation for both rules. The issues raised by the no-distribution amendment were fully litigated. Accordingly, I find that the Respondent

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[4] In reference to the no-solicitation rule found in the Company's employee handbook and the original and revised company general rules, policies, and benefits, Teegerstrom testified:

> The application is the same. As far as I am concerned, even though they use different words, they mean the same thing. It is the way it has always been.
>
> All of those documents, as far as I am concerned, say the same thing. They are just couched in a little different language.

[5] *House of Mosaics, Inc., Subsidiary of Thomas Industries, Inc.*, 215 NLRB 704 (1974).

[6] *Container Corporation of America*, 244 NLRB 318 (1979); *Group One Broadcasting Co., West*, 222 NLRB 993 (1976); *Nugent Service, Inc.*, 207 NLRB 158 (1973).

[7] *Challenge Cook Brothers of Ohio, Inc.*, 153 NLRB 92 (1965), enfd. 374 F.2d 147 (6th Cir. 1967); *George Washington University Hospital, a Division of the George Washington University*, 227 NLRB 1362 (1977).

was not denied due process or prejudiced by the amendment.[8]

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has violated Section 8(a)(1) of the Act by promulgating, maintaining, and enforcing an overly broad no-distribution rule or policy and by promulgating, maintaining, and enforcing an unlawful bulletin board policy.
4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

In order to remedy the unfair labor practices found herein, my recommended Order will require the Respondent to cease and desist therefrom and from infringing upon the Section 7 rights of its employees in any like or related manner.

Upon the foregoing findings of fact and conclusions of law, and the entire record herein, and pursuant to Section 10(c) of the Act, I hereby recommend the following:

ORDER[9]

The Respondent, Axelson, Inc., Longview, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Promulgating, maintaining, or enforcing any rule or policy, written or unwritten, prohibiting its employees from posting either pro- or anti-union literature by employees, or any other labor organization, or prohibiting the distribution of such literature in nonworking areas during employees' nonworking time.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Rescind any rule or policy which unlawfully restricts the employees' use of the Company's bulletin boards and which unlawfully restricts the distribution of either pro- or anti-union literature, by employees, during employees' nonworking time in nonworking areas of its operations.

(b) Post at its Longview, Texas, plant copies of the attached notice marked "Appendix."[10] Copies of said notice, on forms provided by the Regional Director for Region 16, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[8] *Clinton Corn Processing Company, a Division of Standard Brands Incorporated*, 253 NLRB 622 (1980).

[9] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[10] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."